

CHAPTER XIV.

APPLICATION OF THE FOREST ACT TO FOREST OFFENCES.

I may classify the penal provisions of the Forest Act into three groups for the sake of convenience—

- (a) Offences against the forest itself;
- (b) Offences specially punished by sections 61 and 62;
- (c) Cattle trespass;
- (d) Offences relating to forest produce in transit and drift timber.

SECTION I.—(a) OFFENCES AGAINST THE FOREST ITSELF.

§ 1.—*Rules for Reserved Forest.*

Offences against the forest itself are enumerated in section 25¹, as regards permanent forest estates called reserved forests; and the

¹ One of the offences in section 25(f), most commonly brought up, is injury to trees. Nothing is said about *stealing* wood; when the cutting, &c., involves a theft of property the offence would be tried under the Penal Code as a theft. As regards injury to trees, the injuries are all grouped together. The French law deserves a comparative study. Here there is the same practical distinction between the cutting or injuring a tree and the theft of the wood; but the *cutting* or *removal* (*enlèvement*) of trees is classified. Trees are divided into two groups (C. F., Article 192), one of valuable hard wood, and the other of less valuable soft wood; the penalty is different for each, and so also in each class the penalty is different according as the tree is over or under 2 décimètres in girth, measured at 1 mètre from the ground. If the tree has been taken away, so that it cannot be measured, the measurement, for the purpose of determining the offence, is made on the stool, which of course is unfavourable to the delinquent, but is justly so on the principle that "the presumption is against the wrong-doer."

If the tree has been sown or planted, and is not more than five years old, there is a special penalty (C. F., Article 194).

A special penalty (Article 195) is awarded for pulling down (*arracher*) or uprooting young plants, which is made more severe if committed in an artificial plantation or nursery.

Special penalties are enacted (Article 196) for "topping" (cutting off the summit—*éhouper*), barking, or mutilating trees. And if the *principal branches* have been cut the penalty is the same as for actually cutting down the tree.

same acts may also become offences in village and undivided forests, and if under section 27, section 36, or section 79, the provisions of section 25 have been made applicable to these forests, as they may be.

There is also a power of making rules under sections 25 and 27. Breach of rules under section 25 would come under the penal provisions attached to section 25. Rules made under section 27 for the management of village forests would not often be penal rules, but mostly directions; if, however, it were necessary, a penalty under section 76 would be imposed.

It should be remembered that an offence under section 25, or rules made under it, can only arise if the forest *is reserved at the time*; that is to say, if the legal procedure of settlement (or that under section 34) has been duly accomplished, and the forest has become a reserve, or if the provisions of Chapter II have been duly applied to the forest under the appropriate sections already mentioned.

The only exception is the offence under section 25(a), which expressly alludes to a clearing forbidden while the process of 'forest constitution' is going on.

In Burma, as I have marked, offences which answer to those under the Indian Act, section 25, are classified as regards heinousness and the amount of penalty awarded, into two sets, *viz.*, sections 25 and 26; the two together correspond to section 25 of the Indian Act.

§ 2.—*In Protected Forests.*

Offences against what the Act calls "protected forest," *i.e.*, areas of waste not permanently constituted forest domains, are punishable under Chapter IV of the Act. As in the former case (section 25), a list of acts is given which constitute the offences, and a penalty is provided.

But on looking at this list in section 32, it will be observed that, apart from the fact that the provision does not apply at all till the limits of the protected tract have been notified under section 28, nearly all the offences (except that of setting fire to the

forests (d), depend on certain declarations having been made under section 29, and on certain rules having been made under section 31².

The usual process of protecting a forest tract, which was not "reserved," is first to fix the limits, then to notify the valuable kinds of trees as *reserved*, then to issue a *prohibition* against clearing the land for cultivation, quarrying stone, burning lime or charcoal, &c., and lastly to make rules for the general working and utilisation of the forest.

The offences punished by section 32, are—

injuries to *reserved* trees³, breaches of the *prohibitions*,—
breaches of the rules.

§ 3.—*Acts prohibited when not Offences.*

In all the cases under section 25, or section 32, the circumstances which *excuse* an act prohibited should be borne in mind; nothing is an offence under section 25 if there is a rule which allows it, or a *written* (not verbal) permission of the proper forest officer.

Under section 32, nothing is an offence which is done according to a rule or permission as before, or (except in a portion of the forest absolutely closed) in pursuance of a right recorded under section 28⁴.

§. 4.—*Rules for lands not reserved in Burma.*

In the Burma Act the 'protected forests' finds no place; consequently all that is provided is that where there is timber, and other forest produce, outside reserved and village forests, and it is necessary to regulate the use of this material, certain trees are

² See Chapter X, page 262, on "Rules made under the Forest Act."

³ Injuring or cutting trees not reserved might also be an offence, if the injury constituted a breach of the rules made for forest management.

⁴ It is impossible to defend or explain this provision. The attempt to introduce provisions for a record of rights into the chapter on protected waste is most unfortunate, and leads to many difficulties. As no procedure is provided by which rights can be claimed and settled, it is obvious that many rights may exist which are not recorded under section 28; yet such rights, true and lawful as they may be, could not be pleaded as a defence on a prosecution for an act prohibited by the rules.

reserved and certain rules may be made for regulating the removal, cutting, and use of produce generally.

Such provisions are important in Burma, where the whole country is virtually one great forest; scattered teak trees are found here and there over the country on the edges of permanent fields as well as in the jungle, and there are many kinds of bamboos and trees of other forest species much in demand, which may be found all over the country outside the limits of tracts taken up as regular forests. It would never do to leave such trees and other produce to be wasted uncontrolled. Section 36, therefore, protects teak (which are royal trees in Burma), as well as other trees declared to be reserved: and section 37 enables rules to be made for the general prevention of mischief and waste. Of course such rules are enforced only where there has been no written permission to cut, or where there is no *right*.

In section 35, the intention is, while recognizing the existing fact that *all* teak trees, wherever growing, are Government property, ultimately to abandon this right, where the teak trees are found in private lands. What will be done probably is, that Government will utilise and sell the existing stock of mature teak trees scattered over the country, and when nothing remains but small trees, then the Government will abandon its claim to trees on private lands, and the owners will be at liberty to preserve such young teak as remains, for their own benefit.

§ 5.—*Breaches of Subsidiary Rules.*

It is possible that under section 75, subsidiary rules may be made, with reference to some special subject, and breach of these may involve a penalty, which would be under section 76. Such cases, if they occur, will be readily understood and cannot give rise to any difficulty. There is, however, no such section (76) in the Burma Act.

§ 6.—*Absence of certain details in our Rules: disposal of Produce.*

The offences constituted by sections 25 and 32, as regards the forest, depend partly on the requirements of protection, partly on the system of working.

We have not yet any uniform system legally recognized as they have in France. Consequently we are not able yet to specify in the Act those offences against the *system*, which may hereafter require to be prevented.

In France, for example, the method of disposing of the annual timber produce of the State forests is recognized by law. The *plan d'aménagement* or working scheme has prescribed the compartments in which cutting will take place, and the number and size of the trees to be cut. The recognized plan is to sell this "*coupe*" as it stands. The yield is valued by the forest officials and a price put upon it, which is kept secret. The right to cut and remove the yield is then put up to auction, and is only sold if the reserved price is obtained or exceeded. The process of concluding the sale is called the "*adjudication*" and the sale is subject to the conditions of a published "*cahier*" or written schedule of charges, terms and rules. The purchaser is bound as to time, method of extraction, and so forth, as well as to the protection of the trees which are to be left standing in reserve. When the work is over, a minute examination (*recolement*) of the area is made, to see that all conditions have been carefully observed, and that no reserved trees have been touched. This system now works admirably; the severe rules of law necessary to protect the forest have rarely or never to be enforced. A class of traders has grown up, who not only have acquired the exact experience to enable them to judge of the value and character of the "*coupe*"—so that they know exactly what to bid—but they also are a source of strength to the Administration, as they work exactly according to the rules which they are familiar with by practice, and which they never attempt to infringe.

This system being established, the law contains many provisions regarding the "*adjudication*," fraudulent attempts to concert a price, forest officers and their relations illegally bidding, removal of trees not included in the cutting, substitution of bad trees for good marked in reserve, and offences connected with the *récolement*, &c.

Such matters have not yet found a place in our law.